

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:05CV235-03-MU

FRANCISCO CURBELO,

Petitioner,

v.

AARON E. MICHAEL,

Respondent.

ORDER

THIS MATTER comes before the Court on initial review of Plaintiff's Complaint under 42 U.S.C. § 1983, filed May 20, 2005. (Document No. 1.)

Plaintiff Complaint, filed as a § 1983 claim, essentially contains allegations of ineffective assistance of his criminal trial counsel. A case filed under 42 U.S.C. § 1983 requires a deprivation of a right secured by the Constitution by a person acting under color of state law. Plaintiff's trial attorney is not a state actor and therefore cannot be sued under 42 U.S.C. § 1983. Plaintiff's Complaint is therefore DISMISSED.

NOW, THEREFORE, IT IS HEREBY ORDERED that Plaintiff's Complaint is Dismissed; Plaintiff's "Motion to Proceed In Forma Pauperis is Denied as Moot; and Plaintiff's "Motion To Evidentiary Hearing and Oral Argument" (Document No. 3) is Denied as Moot.

Signed: June 14, 2005

A handwritten signature in black ink, reading "Graham C. Mullen", written over a horizontal line.

Graham C. Mullen
Chief United States District Judge

